

IC 24-4.5

**ARTICLE 4.5. UNIFORM CONSUMER CREDIT CODE**

IC 24-4.5-1

Chapter 1. General Provisions and Definitions

(Part 1. Short Title, Construction, General Provisions)

IC 24-4.5-1-101

**Short title**

Sec. 101. Short Title — This Article shall be known and may be cited as Uniform Consumer Credit Code.

*(Formerly: Acts 1971, P.L.366, SEC.2.)*

IC 24-4.5-1-102

**Purposes; rules of construction; application to disguised consumer credit transactions; violations of other consumer credit laws, regulation, or rules; enforcing disclosure requirements for mortgage transactions**

Sec. 102. (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are:

- (a) to simplify, clarify, and modernize the law governing retail installment sales, consumer credit, small loans, and usury;
- (b) to provide rate ceilings to assure an adequate supply of credit to consumers;
- (c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;
- (d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;
- (e) to permit and encourage the development of fair and economically sound consumer credit practices;
- (f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act; and
- (g) to make uniform the law, including administrative rules among the various jurisdictions.

(3) A reference to a requirement imposed by this article includes reference to a related rule or guidance of the department adopted pursuant to this article.

(4) A reference to a federal law in this article is a reference to the law as in effect December 31, 2010.

(5) This article applies to a transaction if the director determines that the transaction:

- (a) is in substance a disguised consumer credit transaction; or
- (b) involves the application of subterfuge for the purpose of

avoiding this article.

A determination by the director under this paragraph must be in writing and shall be delivered to all parties to the transaction. IC 4-21.5-3 applies to a determination made under this paragraph.

(6) The authority of this article remains in effect, whether a licensee, an individual, or a person subject to this article acts or claims to act under any licensing or registration law of this state, or claims to act without such authority.

(7) A violation of a state or federal law, regulation, or rule applicable to consumer credit transactions is a violation of this article.

(8) The department may enforce penalty provisions set forth in 15 U.S.C. 1640 for violations of disclosure requirements applicable to mortgage transactions.

*(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by P.L.14-1992, SEC.2; P.L.122-1994, SEC.1; P.L.45-1995, SEC.2; P.L.176-1996, SEC.1; P.L.172-1997, SEC.1; P.L.80-1998, SEC.2; P.L.23-2000, SEC.1; P.L.63-2001, SEC.1 and P.L.134-2001, SEC.1; P.L.82-2002, SEC.1; P.L.258-2003, SEC.1; P.L.73-2004, SEC.15; P.L.141-2005, SEC.1; P.L.10-2006, SEC.1 and P.L.57-2006, SEC.1; P.L.213-2007, SEC.5; P.L.217-2007, SEC.4; P.L.90-2008, SEC.4; P.L.182-2009(ss), SEC.370; P.L.35-2010, SEC.36; P.L.89-2011, SEC.10.*

#### **IC 24-4.5-1-103**

##### **Supplementary general principles of law applicable**

Sec. 103. Unless displaced by the particular provisions of this article, the Uniform Commercial Code (IC 26-1) and the principles of law and equity (including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause) shall supplement its provisions.

*(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by P.L.152-1986, SEC.57.*

#### **IC 24-4.5-1-104**

##### **Construction against implicit repeal**

Sec. 104. Construction Against Implicit Repeal — This Article being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

*(Formerly: Acts 1971, P.L.366, SEC.2.)*

#### **IC 24-4.5-1-105**

##### **Severability**

Sec. 105. Severability — If any provisions of this Article or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Article which can be given effect without the invalid provision or

application, and to this end the provisions of this Article are severable.

*(Formerly: Acts 1971, P.L.366, SEC.2.)*

#### **IC 24-4.5-1-106**

##### **Adjustment of dollar amounts**

Sec. 106. (1) The dollar amounts in this article designated as subject to change shall change, as provided in this section, according to the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1957-59 equals 100, compiled by Bureau of Labor Statistics, United States Department of Labor, and referred to in this section as the Index. The Index for October, 1971, is the Reference Base Index.

(2) The dollar amounts shall change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the Reference Base Index is ten percent (10%) or more, except that:

- (a) the portion of the percentage change in the Index in excess of a multiple of ten percent (10%) shall be disregarded and the dollar amounts shall change only in multiples of ten percent (10%) of the amounts on March 5, 1971;
- (b) the dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to this article as a result of earlier application of the section; and
- (c) in no event shall the dollar amounts be reduced below the amounts appearing in this article on March 5, 1971.

(3) If the Index is revised after December 1967, the percentage of change shall be calculated on the basis of the revised Index. If the revision of the Index changes the Reference Base Index, a revised Reference Base Index shall be determined by multiplying the Reference Base Index by the ratio of the revised Index to the current Index, as each was for the first month in which the revised Index is available. If the Index is superseded, the Index is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

(4) The department shall issue an emergency rule announcing:

- (a) on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by subsection (2); and
- (b) promptly after the changes occur, changes in the Index required by subsection (3), including, when applicable, the numerical equivalent of the Reference Base Index under a revised Reference Base Index and the designation or title of any index superseding the Index.

(5) A person does not violate this article through a transaction otherwise complying with this article if the person relies on dollar amounts either determined according to subsection (2) or appearing in the last rule of the department announcing the then current dollar amounts.

*(Formerly: Acts 1971, P.L.366, SEC.2; Acts 1972, P.L.182, SEC.1; Acts 1972, P.L.182, SEC.2.) As amended by P.L.152-1986, SEC.58; P.L.3-1990, SEC.84; P.L.14-1992, SEC.3; P.L.1-1994, SEC.117; P.L.122-1994, SEC.2.*

#### **IC 24-4.5-1-107**

##### **Waiver; agreement to forego rights; settlement of claims**

Sec. 107. Waiver; Agreement to Forego Rights; Settlement of Claims - (1) Except as otherwise provided in this Article, a buyer, lessee, or debtor may not waive or agree to forego rights or benefits under this Article.

(2) A claim by a buyer, lessee, or debtor against a creditor for an excess charge, other violation of this Article, or civil penalty, or a claim against a buyer, lessee, or debtor for default or breach of a duty imposed by this Article, if disputed in good faith, may be settled by agreement.

(3) A claim, whether or not disputed against a buyer, lessee or debtor may be settled for less value than the amount claimed.

(4) A settlement in which the buyer, lessee, or debtor waives or agrees to forego rights or benefits under this Article is invalid if the court as a matter of law finds the settlement to have been unconscionable at the time it was made. The competence of the buyer, lessee, or debtor, any deception or coercion practiced upon him, the nature and extent of the legal advice received by him, and the value of the consideration are relevant to the issue of unconscionability.

*(Formerly: Acts 1971, P.L.366, SEC.2.)*

#### **IC 24-4.5-1-108**

##### **Effect on powers of organizations**

Sec. 108. (1) This article prescribes maximum charges for all creditors, except lessors and those excluded (IC 24-4.5-1-202), extending consumer credit, including consumer credit sales (IC 24-4.5-1-301.5(8)), consumer loans (IC 24-4.5-1-301.5(9)), and consumer related sales and loans (IC 24-4.5-2-602 and IC 24-4.5-3-602), and displaces existing limitations on the powers of those creditors based on maximum charges.

(2) With respect to sellers of goods or services, small loan companies, licensed lenders, consumer and sales finance companies, industrial loan and investment companies, and commercial banks and trust companies, this article displaces existing limitations on their powers based solely on amount or duration of credit.

(3) Except as provided in subsection (1) and IC 24-4.6-1, this article does not displace limitations on powers of credit unions, savings banks, savings or building and loan associations, or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

(4) Except as provided in subsections (1) and (2), this article does not displace:

(a) limitations on powers of depository institutions (IC

24-4.5-1-301.5) with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan that is a mortgage transaction, or other similar restrictions designed to protect deposits; or

(b) limitations on powers an organization is authorized to exercise under the laws of this state or the United States.

*(Formerly: Acts 1971, P.L.366, SEC.2; Acts 1974, P.L.115, SEC.3.)  
As amended by P.L.14-1992, SEC.4; P.L.122-1994, SEC.3;  
P.L.35-2010, SEC.37.*

#### **IC 24-4.5-1-109**

##### **Persons licensed or authorized on October 1, 1971**

Sec. 109. All persons licensed on October 1, 1971, under:

- (1) IC 24-5-4 (before its repeal on October 1, 1971);
- (2) IC 28-7-4 (before its repeal on October 1, 1971);
- (3) IC 28-7-2 (before its repeal on October 1, 1971); or
- (4) IC 28-5-1-4;

are licensed to make supervised loans under this article, subject to the renewal provisions contained in this article. All provisions of this article apply to the persons previously licensed or authorized. The department may deliver evidence of licensing to the persons previously licensed or authorized.

*As added by P.L.5-1988, SEC.128. Amended by P.L.3-1990, SEC.85;  
P.L.14-1992, SEC.5; P.L.35-2010, SEC.38.*

#### **IC 24-4.5-1-201**

##### **Territorial application; activities in other states by industrial loan and investment companies**

Sec. 201. (1) Except as otherwise provided in this section, this article applies to sales, leases, and loans made in this state and to modifications, including refinancings, consolidations, and deferrals, made in this state, of sales, leases, and loans, wherever made. For purposes of this article, the following apply:

(a) A sale or modification of a sale agreement is made in this state if the buyer's agreement or offer to purchase or to modify is received by the seller or a person acting on behalf of the seller in this state.

(b) A lease or modification of a lease agreement is made in this state if the lessee's agreement or offer to lease or to modify is received by the lessor or a person acting on behalf of the lessor in this state.

(c) A loan or modification of a loan agreement is made in this state if a writing signed by the debtor and evidencing the debt is received by the lender or a person acting on behalf of the lender in this state.

(d) Except as provided in subdivision (e), a sale, lease, or loan transaction occurs in Indiana if a consumer who is a resident of Indiana enters into a consumer sale, lease, or loan transaction with a creditor or a person acting on behalf of the creditor in another state and the creditor or the person acting on behalf of

the creditor has advertised or solicited sales, leases, or loans in Indiana by any means, including by mail, brochure, telephone, print, radio, television, the Internet, or electronic means. However, during the period beginning July 1, 2007, and ending June 30, 2009, this subdivision does not apply to an affiliate or a subsidiary of a financial corporation issued a certificate of authority to operate as an industrial loan and investment company under IC 28-5 if all of the following apply:

- (i) The industrial loan and investment company notifies the department in writing that an affiliate or a subsidiary of the industrial loan and investment company engages or plans to engage in activity involving Indiana residents at an out of state location. The notification required by this clause must list all states other than Indiana in which consumer loans may be made and must describe the nature of the proposed transactions.
- (ii) The industrial loan and investment company provides written consent allowing the department to consult with and review information provided by other state regulators, as may be requested by the department, concerning the activities identified in clause (i) of any affiliate or subsidiary engaging in consumer lending to Indiana residents in the states identified under clause (i).
- (iii) The industrial loan and investment company provides written consent allowing the department to inspect or examine all out of state locations in which an affiliate or a subsidiary of the industrial loan and investment company engages in the activities identified under clause (i) for the purpose of investigating the affiliate's or subsidiary's consumer lending practices involving Indiana residents. An inspection or examination performed by the department under this clause is subject to the schedule of fees established by the department under IC 28-11-3-5.
- (e) A sale, lease, or loan transaction does not occur in Indiana if a consumer who is a resident of Indiana enters into a consumer sale, lease, or loan transaction secured by an interest in land located outside Indiana.

For purposes of subdivisions (a) through (c), an offer is received by a creditor or a person acting on behalf of the creditor in Indiana if the offer is physically delivered, or otherwise transmitted or communicated, to a person who has actual or apparent authority to act for the creditor or the person acting on behalf of the creditor in Indiana, regardless of whether approval, acceptance, or ratification by any other agent or representative of the creditor or the person acting on behalf of the creditor in another state is necessary to give legal consequence to the consumer credit transaction.

(2) IC 24-4.5-5-101 through IC 24-4.5-5-108 apply to actions or other proceedings brought in this state to enforce rights arising from consumer credit sales, consumer leases, or consumer loans, or extortionate extensions of credit, wherever made.

(3) Except as provided in subsection (2), a sale, lease, loan, or modification thereof, made in another state to a person who was not a resident of this state when the sale, lease, loan, or modification was made is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

(4) For the purposes of this article, the residence of a buyer, lessee, or debtor is the address given by the buyer, lessee, or debtor as the buyer's, lessee's, or debtor's residence in any writing or electronic communication made by the buyer, lessee, or debtor in connection with a credit transaction. Until the buyer, lessee, or debtor notifies the creditor or the person acting on behalf of the creditor of a new or different address, the given address is presumed to be unchanged.

(5) Notwithstanding other provisions of this section:

(a) except as provided in subsection (2), this article does not apply if the buyer, lessee, or debtor is not a resident of this state at the time of a credit transaction and the parties then agree that the law of the buyer's, lessee's, or debtor's residence applies; and

(b) this article applies if the buyer, lessee, or debtor is a resident of this state at the time of a credit transaction and the parties then agree that the law of this state applies.

(6) Except as provided in subsection (5), the following agreements by a buyer, lessee, or debtor are invalid with respect to consumer credit sales, consumer leases, consumer loans, or modifications thereof, to which this article applies:

(a) that the law of another state shall apply;

(b) that the buyer, lessee, or debtor consents to the jurisdiction of another state; and

(c) that fixes venue.

(7) The following provisions of this article specify the applicable law governing certain cases:

(a) applicability (IC 24-4.5-6-102) of the provisions on powers and functions of the department; and

(b) applicability (IC 24-4.5-6-201) of the provisions on notification and fees.

(8) If a creditor or a person acting on behalf of the creditor has violated the provisions of this article that apply to the authority to make consumer loans (IC 24-4.5-3-502), the loan is void and the debtor is not obligated to pay either the principal or loan finance charge, as set forth in IC 24-4.5-5-202.

*(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by Acts 1979, P.L.236, SEC.1; P.L.152-1986, SEC.59; P.L.252-1987, SEC.5; P.L.14-1992, SEC.6; P.L.122-1994, SEC.4; P.L.10-2006, SEC.2 and P.L.57-2006, SEC.2; P.L.213-2007, SEC.6; P.L.217-2007, SEC.5; P.L.90-2008, SEC.5.*

#### **IC 24-4.5-1-202 Version a**

##### **Exclusions**

*Note: This version of section amended by P.L.89-2011, SEC.11.  
See also following version of this section amended by P.L.9-2011,  
SEC.2.*

Sec. 202. This article does not apply to the following:

- (1) Extensions of credit to government or governmental agencies or instrumentalities.
- (2) The sale of insurance by an insurer, except as otherwise provided in the chapter on insurance (IC 24-4.5-4).
- (3) Transactions under public utility, municipal utility, or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.
- (4) The rates and charges and the disclosure of rates and charges of a licensed pawnbroker established in accordance with a statute or ordinance concerning these matters.
- (5) A sale of goods, services, or an interest in land in which the goods, services, or interest in land are purchased primarily for a purpose other than a personal, family, or household purpose.
- (6) A loan in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.
- (7) An extension of credit primarily for a business, a commercial, or an agricultural purpose.
- (8) An installment agreement for the purchase of home fuels in which a finance charge is not imposed.
- (9) Loans made, insured, or guaranteed under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).
- (10) Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.
- (11) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3, IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a loan made:
  - (A) in compliance with the requirements of; and
  - (B) by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from; the Indiana housing and community development authority established by IC 5-20-1-3.
- (12) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3, IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a subordinate lien mortgage transaction made by an entity that exclusively uses funds provided by the United States Department of Housing and Urban Development under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383, as amended (42 U.S.C. 5301 et seq).
- (13) The United States, any state or local government, or any agency or instrumentality of any governmental entity, including United States government sponsored enterprises.

*(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by Acts 1981,*



*P.L.217, SEC.1; Acts 1982, P.L.149, SEC.1; P.L.247-1983, SEC.1; P.L.14-1992, SEC.7; P.L.176-1996, SEC.2; P.L.73-2004, SEC.16; P.L.1-2006, SEC.410 and P.L.181-2006, SEC.57; P.L.35-2010, SEC.39; P.L.89-2011, SEC.11.*

#### **IC 24-4.5-1-202 Version b**

##### **Exclusions**

*Note: This version of section amended by P.L.9-2011, SEC.2. See also preceding version of this section amended by P.L.89-2011, SEC.11.*

Sec. 202. (a) As used in this section, "balloon payment", with respect to a mortgage transaction, means any payment that:

- (1) the creditor requires the debtor to make at any time during the term of the mortgage;
- (2) represents the entire amount of the outstanding balance with respect to the mortgage; and
- (3) the entire amount of which is due as of a specified date or at the end of a specified period;

if the aggregate amount of the minimum periodic payments required under the mortgage would not fully amortize the outstanding balance by the specified date or at the end of the specified period. The term does not include a payment required by a creditor under a due-on-sale clause (as defined in 12 U.S.C. 1701j-3(a)) or a payment required by a creditor under a provision in the mortgage that permits the creditor to accelerate the debt upon the debtor's default or failure to abide by the material terms of the mortgage.

(b) This article does not apply to the following:

- (1) Extensions of credit to government or governmental agencies or instrumentalities.
- (2) The sale of insurance by an insurer, except as otherwise provided in the chapter on insurance (IC 24-4.5-4).
- (3) Transactions under public utility, municipal utility, or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.
- (4) The rates and charges and the disclosure of rates and charges of a licensed pawnbroker established in accordance with a statute or ordinance concerning these matters.
- (5) A sale of goods, services, or an interest in land in which the goods, services, or interest in land are purchased primarily for a purpose other than a personal, family, or household purpose.
- (6) A loan in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.
- (7) An extension of credit primarily for a business, a commercial, or an agricultural purpose.
- (8) An installment agreement for the purchase of home fuels in which a finance charge is not imposed.
- (9) Loans made, insured, or guaranteed under a program authorized by Title IV of the Higher Education Act of 1965 (20

U.S.C. 1070 et seq.).

(10) Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(11) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3, IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a loan made:

(A) in compliance with the requirements of; and

(B) by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from; the Indiana housing and community development authority established by IC 5-20-1-3.

(12) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3, IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a subordinate lien mortgage transaction made by an entity that exclusively uses funds provided by the United States Department of Housing and Urban Development under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383, as amended (42 U.S.C. 5301 et seq).

(13) A bona fide nonprofit entity not operating in a commercial context, as determined by the director, if the following criteria are satisfied:

(A) Subject to clause (B), the entity originates only one (1) or both of the following types of mortgage transactions:

(i) Zero (0) interest first lien mortgage transactions.

(ii) Zero (0) interest subordinate lien mortgage transactions.

(B) The entity does not require, under the terms of the mortgage or otherwise, balloon payments with respect to the mortgage transactions described in clause (A).

(C) The entity is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

(D) The entity's primary purpose is to serve the public by helping low income individuals and families build, repair, and purchase housing.

(E) The entity uses only:

(i) unpaid volunteers; or

(ii) employees whose compensation is not based on the number or size of any mortgage transactions that the employees originate;

to originate the mortgage transactions described in clause (A).

(F) The entity does not charge loan origination fees in connection with the mortgage transactions described in clause (A).

*(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by Acts 1981, P.L.217, SEC.1; Acts 1982, P.L.149, SEC.1; P.L.247-1983, SEC.1; P.L.14-1992, SEC.7; P.L.176-1996, SEC.2; P.L.73-2004, SEC.16; P.L.1-2006, SEC.410 and P.L.181-2006, SEC.57; P.L.35-2010, SEC.39; P.L.9-2011, SEC.2.*

#### **IC 24-4.5-1-203**

##### **Repealed**

*(Repealed by P.L.35-2010, SEC.209.)*

#### **IC 24-4.5-1-204**

##### **Regulation of individuals also conducting loan brokerage business; department's cooperation with securities commissioner**

Sec. 204. In examinations or other regulatory activities conducted by the department and related to licensees under this article, the department may cooperate with the Indiana securities commissioner in the regulation of individuals who, in addition to conducting business regulated under this article, also conduct a loan broker business subject to IC 23-2-5.

*As added by P.L.35-2010, SEC.40.*

(Part 3. Definitions)

#### **IC 24-4.5-1-301**

##### **Repealed**

*(Repealed by P.L.35-2010, SEC.209.)*

#### **IC 24-4.5-1-301.5**

##### **Definitions**

Sec. 301.5. In addition to definitions appearing in subsequent chapters in this article, the following definitions apply throughout this article:

(1) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

- (a) controls;
- (b) is controlled by; or
- (c) is under common control with;

the person subject to this article.

(2) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(3) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(4) "Average daily balance" means the sum of each of the daily balances in a billing cycle divided by the number of days in the billing cycle, and if the billing cycle is a month, the creditor may elect to treat the number of days in each billing cycle as thirty (30).

(5) "Closing costs" with respect to a subordinate lien mortgage transaction includes:

- (a) fees or premiums for title examination, title insurance, or similar purposes, including surveys;
- (b) fees for preparation of a deed, settlement statement, or other documents;
- (c) escrows for future payments of taxes and insurance;
- (d) fees for notarizing deeds and other documents;
- (e) appraisal fees; and
- (f) fees for credit reports.

(6) "Conspicuous" refers to a term or clause when it is so written that a reasonable person against whom it is to operate ought to have noticed it.

(7) "Consumer credit" means credit offered or extended to a consumer primarily for a personal, family, or household purpose.

(8) "Consumer credit sale" is a sale of goods, services, or an interest in land in which:

- (a) credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;
- (b) the buyer is a person other than an organization;
- (c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;
- (d) either the debt is payable in installments or a credit service charge is made; and
- (e) with respect to a sale of goods or services, either the amount financed does not exceed fifty thousand dollars (\$50,000) or the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

Unless the sale is made subject to this article by agreement (IC 24-4.5-2-601), "consumer credit sale" does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement or except as provided with respect to disclosure (IC 24-4.5-2-301), debtors' remedies (IC 24-4.5-5-201), providing payoff amounts (IC 24-4.5-2-209), and powers and functions of the department (IC 24-4.5-6) a sale of an interest in land which is a first lien mortgage transaction.

(9) "Consumer loan" means a loan made by a person regularly engaged in the business of making loans in which:

- (a) the debtor is a person other than an organization;
- (b) the debt is primarily for a personal, family, or household purpose;
- (c) either the debt is payable in installments or a loan finance charge is made; and
- (d) either:
  - (i) the principal does not exceed fifty thousand dollars (\$50,000); or
  - (ii) the debt is secured by an interest in land or by personal property used or expected to be used as the principal dwelling of the debtor.

Except as described in IC 24-4.5-3-105, the term does not include a first lien mortgage transaction.

(10) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(11) "Creditor" means a person:

- (a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as applicable, or is payable by written agreement in more than four (4) installments (not including a down payment); and
- (b) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is not a note or contract.

(12) "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

(13) "Director" means the director of the department of financial institutions or the director's designee.

(14) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

- (a) condominium unit;
- (b) cooperative unit;
- (c) mobile home; or
- (d) trailer;

that is used as a residence.

(15) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program.

(16) "Employee" means an individual who is paid wages or other compensation by an employer required under federal income tax law to file Form W-2 on behalf of the individual.

(17) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(18) "First lien mortgage transaction" means:

- (a) a loan; or
- (b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage (or another equivalent consensual security interest) that constitutes a first lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed. The term does not include a land contract.

(19) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(20) "Individual" means a natural person.

(21) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

- (a) by the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;
- (b) by the lender's payment or agreement to pay the debtor's obligations; or
- (c) by the lender's purchase from the obligee of the debtor's obligations.

(22) "Licensee" means a person licensed as a creditor under this article.

(23) "Loan brokerage business" means any activity in which a person, in return for any consideration from any source, procures, attempts to procure, or assists in procuring, a mortgage transaction from a third party or any other person, whether or not the person seeking the mortgage transaction actually obtains the mortgage transaction.

(24) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person licensed or exempt from licensing under this article. For purposes of this subsection, the term "clerical or support duties" may include, after the receipt of an application, the following:

- (a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction.
- (b) The communication with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:
  - (i) offering or negotiating loan rates or terms; or
  - (ii) counseling consumers about mortgage transaction rates or terms.

An individual engaging solely in loan processor or underwriter activities, shall not represent to the public through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(25) "Mortgage loan originator" means an individual who, for compensation or gain, or in the expectation of compensation or gain, engages in taking a mortgage transaction application or in offering or negotiating the terms of a mortgage transaction that either is made under this article or under IC 24-4.4 or is made by an employee of a person licensed or exempt from licensing under this article or under IC 24-4.4, while the employee is engaging in the loan brokerage business. The term does not include the following:

- (a) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an

employee of a person licensed or exempt from licensing under this article.

(b) Unless the person or entity is compensated by:

- (i) a creditor;
- (ii) a loan broker;
- (iii) another mortgage loan originator; or
- (iv) any agent of the creditor, loan broker, or other mortgage loan originator described in items (i) through (iii);

a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law.

(c) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D)).

(26) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage.

(27) "Mortgage transaction" means:

- (a) a loan; or
- (b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage (or another equivalent consensual security interest) on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed. The term does not include a land contract.

(28) "Nationwide Mortgage Licensing System and Registry", or "NMLSR", means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of creditors and mortgage loan originators.

(29) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.

(30) "Official fees" means:

- (a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or
- (b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) that would otherwise be payable.

(31) "Organization" means a corporation, a government or governmental subdivision, an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, an association, a joint venture, an unincorporated organization, or any other entity, however organized.

(32) "Payable in installments" means that payment is required or

permitted by written agreement to be made in more than four (4) installments not including a down payment.

(33) "Person" includes an individual or an organization.

(34) "Person related to" with respect to an individual means:

- (a) the spouse of the individual;
- (b) a brother, brother-in-law, sister, or sister-in-law of the individual;
- (c) an ancestor or lineal descendants of the individual or the individual's spouse; and
- (d) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(35) "Person related to" with respect to an organization means:

- (a) a person directly or indirectly controlling, controlled by, or under common control with the organization;
- (b) a director, an executive officer, or a manager of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;
- (c) the spouse of a person related to the organization; and
- (d) a relative by blood or marriage of a person related to the organization who shares the same home with the person.

(36) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed, unless and until evidence is introduced that would support a finding of its nonexistence.

(37) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:

- (a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.
- (b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.
- (c) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).
- (d) Engaging in any activity for which a person is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.
- (e) Offering to engage in any activity, or act in any capacity, described in this subsection.

(38) "Registered mortgage loan originator" means any individual who:

- (a) meets the definition of mortgage loan originator and is an employee of:
  - (i) a depository institution;
  - (ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or



- (iii) an institution regulated by the Farm Credit Administration; and
    - (b) is registered with, and maintains a unique identifier through, the NMLSR.
  - (39) "Regularly engaged", with respect to a person who extends consumer credit, refers to a person who:
    - (a) extended consumer credit:
      - (i) more than twenty-five (25) times; or
      - (ii) at least one (1) time for a mortgage transaction secured by a dwelling;  
in the preceding calendar year; or
    - (b) extends or will extend consumer credit:
      - (i) more than twenty-five (25) times; or
      - (ii) at least one (1) time for a mortgage transaction secured by a dwelling;  
in the current calendar year, if the person did not meet the numerical standards described in subdivision (a) in the preceding calendar year.
  - (40) "Residential real estate" means any real property that is located in Indiana and on which there is located or intended to be constructed a dwelling.
  - (41) "Seller credit card" means an arrangement that gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or from that person and any other person. The term includes a card that is issued by a person, that is in the name of the seller, and that can be used by the buyer or lessee only for purchases or leases at locations of the named seller.
  - (42) "Subordinate lien mortgage transaction" means:
    - (a) a loan; or
    - (b) a consumer credit sale;that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage (or another equivalent consensual security interest) that constitutes a subordinate lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed. The term does not include a land contract.
  - (43) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.
  - (44) "Land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.
- As added by P.L.35-2010, SEC.41. Amended by P.L.89-2011, SEC.12.*

#### **IC 24-4.5-1-302**

##### **Federal Consumer Credit Protection Act**

Sec. 302. Federal Consumer Credit Protection Act — In this Article "Federal Consumer Credit Protection Act" means the

Consumer Credit Protection Act (Public Law 90-321; 82 Stat. 146), as amended, and includes both the Truth in Lending Simplification and Reform Act amendments (Public Law 96-221, Title VI, 94 Stat. 168) and any regulations issued pursuant to those laws. However, the department may otherwise define this term by rule issued in accordance with IC 24-4.5-6-107.

*(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by Acts 1982, P.L.149, SEC.2; P.L.14-1992, SEC.10.*

**IC 24-4.5-1-303**

**Repealed**

*(Repealed by P.L.35-2010, SEC.209.)*